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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-fourth session

PROVISIONAL SUMMARY RECORD OF THE 1021st MEETING

Held at the Palais des Nations, Geneva,
on Friday, 4 March 1994, at 3 p.m.

Chairman: Mr. LECHUGA HEVIA

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The meeting was called to order at 3.15 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Eleventh periodic report of Morocco (CERD/C/225/Add.1) (continued)

1. At the invitation of the Chairman, Mr. Benhima and Mr. Laghmari (Morocco) took places at the Committee table.

2. Mr. SHAHI said that the report of Morocco was very informative, in particular paragraphs 66 to 75, which contained the replies of the Moroccan Government to the Committee's comments on its eighth periodic report. Morocco had set an example in that respect which he hoped other States parties would follow.

3. With regard to article 4, he endorsed the comments made by Mr. Aboul-Nasr. While the report might conform to the spirit, it did not fully conform to the letter of the Convention. The Committee's position was that article 4 was mandatory and should be reflected in national legislation even if there was no evidence that racial discrimination existed in the country concerned. He hoped that the Committee's concerns on that matter would be taken into account in Morocco's next periodic report.

4. On the question raised by Mr. de Gouttes, he said he believed that the rights of illegitimate children were covered by the Convention on the Rights of the Child and it would be for the Government of Morocco, if it became a party to that Convention, to see whether its existing laws and customs could be reconciled with the requirements of that Convention. It might be salutary for the Committee to bear in mind, when questioning a State party, that its own members came from States with very different forms of civilization, culture and history and that no one State party could be the mirror image of another. While the Committee strove to find a common approach to human rights problems, it needed to take into account the particular situation in each country and should not attempt to impose uniformity.

5. He pointed out that paragraph 5 of the Vienna Declaration and Programme of Action (A/CONF.157/24) adopted at the World Conference on Human Rights in June 1993 noted that States should bear in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds when promoting and protecting human rights. In some States, for example, polygamy was permissible, while in others, polyandry prevailed: it should be left to the discretion of the Governments concerned to decide when to introduce changes that would bring those customs more into line with international standards.

6. Similarly, where freedom to believe or not to believe was concerned, there were societies in which it would be difficult for the Government to legislate to protect non-believers, because of the need to be responsive to public opinion. There seemed to be some confusion about the meaning of the term "secularism",

which in many parts of the world was equated with "atheism". He himself did not see any connection between the two concepts. Even in States which conformed to religious laws, there was a large body of secular legislation which was accepted as equally valid. Thus, Pakistan's Council of Islamic Ideology had scrutinized hundreds of laws, including conventions of the International Labour Organisation (ILO), and had declared some 95 per cent of them to be in conformity with, or at least not repugnant to, Islamic law.

7. Mr. CHIGOVERA also commended the report, as well as the oral introduction by the Moroccan representative. In particular, he welcomed the appointment of a Deputy Minister for Human Rights in Morocco and the Government's ratification of several conventions in the human rights field.

8. Paragraph 8 of the report referred to the setting up of "an advisory council for human rights". What were the functions of that council, particularly in relation to the elimination of racial discrimination? With reference to paragraph 9, were treaties and international conventions automatically incorporated into Moroccan domestic law upon ratification or was any specific legislation enacted to give effect to them?

9. He had noted that article 9 of the Moroccan Constitution guaranteed freedom of opinion, freedom of expression and freedom to belong to the political party of one's choice. It had nevertheless been reported that any negative comments on Morocco's claim to the Western Sahara were forbidden under Moroccan law. Could the Moroccan representative comment on that point?

10. Mr. SHERIFIS joined previous speakers in expressing appreciation of the Committee's continuing dialogue with Morocco. An exchange of views between the Committee and a State party was always valuable, even if the two sides were not always successful in convincing one another.

11. On the matter of the interpretation of article 4, it was only fair to say that other States parties, as well as Morocco, has shown themselves to be at fault. However, he recalled that, on a previous occasion, when an earlier report of Morocco was being considered, a member of the Committee had emphasized that any Government representing a State party had an obligation to comply with the requirements of article 4: first, in order to implement one of the provisions of the Convention; secondly, because no Government could ever be sure that racist movements or incidents would not occur; and, thirdly, because a State's campaign against racial discrimination should be dissuasive and its Penal Code should thus provide for penalties in the case of any violation of the principle of non-discrimination. Those arguments had been valid then and were still valid today.

12. He pointed out that Morocco was one of the States parties to the Convention which were in arrears with their reports: by the time the eleventh periodic report had been submitted, the twelfth had already been due. He hoped that Morocco would consider the possibility of making the declaration under article 14 of the Convention.

13. He welcomed the statement in paragraph 37 of the core document of Morocco (HRI/CORE/1/Add.23) that compulsory courses in human rights were held in police and military training schools. However, he did not fully understand the statement in paragraph 39 that none of the reports drawn up pursuant to international human rights instruments were the subject of public debate. Since article 7 required States parties to propagate the purposes and principles of the Convention, surely public debate on such reports was to be welcomed?

14. The statement in paragraph 41 of the eleventh periodic report that a commission had been established to review the Code of Personal Law "with a view to restoring Moroccan women's rights" perhaps needed some redrafting, since as it stood it seemed to imply that Moroccan women had previously been deprived of those rights. He too would appreciate clarification on the question raised by Mr. Ahmadu, namely, the treatment of blacks south of the Sahara, especially those who were not Moroccan nationals.

15. With regard to article 3, he commended the very positive attitude always shown by the Moroccan Government in respect of the abolition of the abhorrent doctrine of apartheid. However, like Mr. Aboul-Nasr and Mr. Yutzis, he was somewhat concerned at the statement in paragraph 71 of the report that any overt act of atheism or propaganda in favour of it had been declared a criminal offence: that did not seem to be in keeping with the spirit of the Convention. In fact, history had shown that there were fundamentalists of many religions who had attempted to sow anarchy and create hostility.

16. He was pleased to note that Morocco was complying with many of the provisions of the Convention and hoped that there would be some improvement in compliance with some other provisions on the basis of the dialogue that was now taking place.

17. Mr. BENHIMA (Morocco) said that his delegation greatly appreciated the Committee's constructive criticism, in particular Mr. Garvalov's uncompromising report, which had revealed certain shortcomings that would certainly be brought to the attention of his Government.

18. He noted that the Committee was unanimous in its conviction that it was absolutely essential to respect not only the spirit, but also the letter of article 4 of the Convention. He would report that view to his Government, although he felt that the primacy of international law in his country and the fact that the provisions of instruments such as the Convention could be invoked automatically before Moroccan courts offered sufficient protection against the offences referred to in article 4.

19. Turning to the question on the ethnic composition of the population, he said that many people seemed to hold the simplistic view that Morocco was composed of easily distinguishable and geographically separate groups. Nothing could be further from the truth. Most Moroccans would have the greatest difficulty in saying what proportion of their genes came from Arab, Berber, Jewish, Black, Portuguese or Spanish ancestors. There was no compartmentalization of ethnic

groups. Owing to its geographical position at the confluence of the Mediterranean Sea and the Atlantic Ocean, Morocco had a long tradition of contact with a variety of different races and cultures and that tradition had generated a spirit of tolerance. Even during the Crusades and the wars against Islam in the Iberian Peninsula, Morocco had maintained relations of trade, navigation and friendship with Europe, contributing to the intermingling of races that had forged the composite population of modern times.

20. Mr. Yutzis had been disturbed to note that Morocco's stability was based on Islam as the State religion, drawing comparisons with the Inquisition, but Islam had always allowed freedom of worship for the revealed religions. For example, there was a famous school for the training of rabbis in Morocco. The whole concept of discrimination was alien to Islam.

21. The Advisory Council for Human Rights had been set up in response to a personal initiative by the King. Its mandate was to assist His Majesty in all matters of relevance to human rights and to serve as a national institution for the defence and promotion of human rights. It was composed of the Minister for Foreign Affairs and the Ministers of the Interior, Justice and Islamic Affairs, all of whom played a role in ensuring that Moroccan domestic legislation and practice were in conformity with international human rights precepts. All political parties, trade unions and non-governmental organizations concerned with human rights were represented on the Council together with a number of academics and researchers. Its recommendations to the King had all been accepted. For example, the Council had set up three working groups dealing with police custody and custody pending trial, prison conditions and contacts with non-governmental organizations dealing with human rights. Professionals were being trained in the application of human rights. Courses were held in, for example, the National Institute of Legal Studies, the school of further training for Government officials run by the Ministry of the Interior and the Royal Police Academy. The Council had no specific mandate relating to racial discrimination and had as yet received no complaint under that heading.

22. With regard to women's rights, he agreed with Mr. Sherifis that the wording of paragraph 41 of the report was infelicitous. As Moroccan women had not been deprived of their rights, it was misleading to speak of "restoring" them. However, recognizing that abuses might have occurred in the application of the Moudawana (Code of Personal Law), the King had set up a Commission on the Status of Women composed of a cross-section of women from all regions and population groups. He was anxious that any reform of the Moudawana should take place in an atmosphere of dialogue without undue interference from obscurantist elements. A number of new provisions had therefore been introduced following consultations with the Commission and the ulema. A woman could no longer be forced to marry a man who was not of her choosing. The consent of parents to a marriage was no longer compulsory. Restrictions had been imposed on polygamy: a husband had to have valid reasons for taking a second wife, such as the sterility of his first wife. Moreover, the latter's consent was required and the prospective second wife had to be informed of the existence of the first. Repudiation of a wife without appeal was also a thing of the past. An arbitration and conciliation

procedure had been introduced. Certain rules relating to maintenance and compensation had to be observed and it was up to a judge to decide which of the parents should have custody of the children.

23. The proposed new Labour Code had been drafted in the context of Morocco's efforts to develop a modern market economy and in response to strong population growth, which had put pressure on the existing social infrastructure. Its ultimate aim was to ensure social and economic stability. It would shortly be discussed with management and labour and would then be submitted to the Parliament for adoption.

24. Moroccan law offered the same protection to foreign residents, of whom there were roughly 60,000, as to Moroccan nationals. When they appeared before the courts, the services of an interpreter were made available if necessary.

25. Replying to questions about the composition of the population and, in particular, about black Moroccans and the descendants of African slaves, he said that references to slavery seemed to stem from a misunderstanding. Morocco had been one of the first countries to abolish slavery. In its earlier history, there had been an attenuated form of slavery, but no forced labour. Black domestic personnel had been treated as members of the family. Blacks had entered Morocco from neighbouring countries in successive stages. Black Moroccans were integrated into society and suffered no discrimination. The only form of hostility to which they might conceivably be exposed was the "day-to-day" antipathy that might be encountered anywhere among individuals and to which a member of the Committee had referred when Morocco's eighth report had been considered. As to the reference to the situation of sub-Saharan blacks, there might have been some confusion with the border conflict between Senegal and Mauritania, in which Morocco was not involved.

26. In general, he was unable to discern any distinctions in Moroccan society that might give rise to hostility. That applied to language as well. His country was unique in that, as from the eighth century, all Moroccans had shared a common language, Arabic, the language of the Koran. Morocco covered an extensive territory and had played a crucial role in the Arabization and Islamization of Africa. Consequently, although other languages - Berber and Spanish, for instance - were also widely spoken in different areas, there was no language barrier; nor was there any linguistic compartmentalization. Morocco was open to all languages and, although for cultural reasons, French and Arabic were the languages of instruction and of the news media, the information given in the analytical country summary distributed by the Anti-Racism Information Service (ARIS) was totally misleading in claiming that the teaching of science and technology in French excluded "the monolingual Arab population from those programmes". In addition to Arabic, French was compulsory from a certain age and level of education in schools, which were attended by students of Arab and Berber origin alike. There was no question of denying the Berber-speaking population access to science and technology. That such subjects were currently taught in French was a temporary measure until such time as the new vocabulary of science and technology had entered the Arabic language.

27. Mrs. Sadiq Ali had asked a number of questions about the territory known as Western Sahara. Some background was needed to understand the question fully. Following the colonial period, Morocco had recovered its territorial integrity in several stages. Morocco's conviction that Western Sahara was part of its national territory was founded on the existence in Western Sahara, prior to the Spanish protectorate, of a tribal population whose chiefs had had historical ties of allegiance to the King of Morocco, the notion of allegiance to the King being the very foundation of the entire Moroccan monarchic system. The dispute with Spain over the territory had arisen over Spain's denial that the territory had been populated on its arrival. Morocco had taken the case to the International Court of Justice, whose finding - to the effect that there had been such a population - had reinforced its conviction, leading to the "Green March", when Morocco had entered the territory peacefully. Until then, no claim for independence had been heard; the independent movement known as Frente POLISARIO had been invented for the purpose, at the instigation of the Spanish occupants.

28. Morocco had consistently sought to resolve the ensuing dispute through negotiation and dialogue and had subsequently proposed the holding of a referendum on self-determination in Western Sahara and had cooperated with the Secretary-General of the United Nations in the complex process leading to a peaceful settlement of the issue under United Nations supervision and control. It had accepted all the provisions of the peace plan proposed by the Secretary-General to that end, on one condition, namely, that all those of proven Sahrawi origin without exception, including the large numbers of Sahrawis who had fled Western Sahara to escape the Spanish repression, should be entitled to participate in the referendum. Frente POLISARIO claimed that registration should be confined to the 74,000 people of Western Saharan registered in the Spanish census of 1974. The allegation that Morocco was obstructing the referendum had no basis in fact, as shown by the absence of any indication to that effect in United Nations reports on the subject. Faced now with the prospect that the outcome of the referendum would not be in its favour, Frente POLISARIO had taken to questioning the Secretary-General's impartiality and was now employing a new tactic, seeking to have the peace plan shelved and demanding direct negotiations with Morocco. Morocco, for its part, accepted the peace plan and was ready to proceed immediately with the referendum.

29. Mrs. Sadiq Ali had based her questions about Sahrawis who had allegedly disappeared on a report by Amnesty International. Morocco cooperated with non-governmental organizations, which played a very useful role in denouncing human rights violations, but considered that they should observe a code of ethics and supply only information that had been verified. He strongly denied the allegations. To begin with, the figure of 800 disappeared persons had been produced suddenly, from 1989-1990 onwards, some 12 years after the beginning of the dispute over the territory. Furthermore, no two non-governmental organizations quoted the same figures, which cast doubt on their veracity. The United Nations Working Group on Enforced or Involuntary Disappearances had itself produced a list of some 200. That claim had subsequently been disproved.

30. Investigating the cases reported, the Moroccan authorities had unmasked the trickery used by the Frente POLISARIO to mislead the non-governmental organizations, providing them with lists in which, for instance, some of the alleged victims' names had appeared more than once, with different spellings. In another case, those who had reportedly disappeared had been found in Frente POLISARIO camps. Other names on the lists concerned persons who had disappeared when the territory had still been under Spanish rule. Others again had died in battle. In 1991, some 270 of those reported to have disappeared, who had in fact been held under house arrest, had been released. He was not questioning the good faith of the non-governmental organizations, but they had committed the error of failing to check the information which had been provided to them and which was false. With regard to Amnesty International, it was a political movement which had, in order to defend its cause, taken advantage of the good faith of a member of the Committee, and that was why he had exercised his right of reply.

31. Religion and belief being extremely complex issues, freedom of religion and belief was a difficult and delicate topic. Morocco, an Islamic State, revered God and His Prophets. Christ and Moses were considered to have been sent by God to reveal His message of love, friendship and solidarity between peoples. The Constitution guaranteed everyone freedom to profess his religion. Moroccan Jews in particular had cause to acknowledge the respect in which their faith was held and which had been dramatically demonstrated during the Second World War with the Sultan's refusal to apply the discriminatory laws of Vichy to them. Throughout half a century of Israel-Arab conflict, Morocco had opposed the racist ideology of Zionism, but it had no quarrel whatsoever with Judaism. Arabs and Jews alike were Semites and the descendants of Abraham.

32. Atheism was regarded in Morocco, as elsewhere, as a negation of religion. The negation of Islam, which in Morocco was a threat to the very foundations of the State, was naturally considered a criminal offence, as was proselytism on behalf of atheism.

33. Although it might be practised in private Baha'ism was regarded as a heresy and as a danger to Islam. Baha'ist propaganda was consequently prohibited. Non-monotheistic religions might also be practised, but discreetly and in a manner that did not disturb public order. No self-respecting Government could allow the creation of conditions that might lead to disturbances of public order, and, in particular, to animosity between different segments of the population. In Morocco, any attempt to convert Muslims to another faith was regarded as an inadmissible assault on the nation's unity, stability, cohesion and fraternity.

34. The existence of disparities in wealth in Morocco could not be denied. As in other third world countries and for the same basic reasons, namely, poverty, and, to a lesser extent, the desire shared by rural populations in Europe as well, for improved facilities, services and comforts, there was a migration from the countryside to urban centres and the shanty towns around them, which were

plagued by unemployment, prostitution and other problems. The temptation to industrialize at all costs had nevertheless been resisted and efforts had been made fully to exploit the country's natural resources, including its Atlantic climate. Morocco was thus a net exporter of agricultural produce. The Government, assisted by the private sector and charitable organizations, was doing its best to alleviate the condition of poor city-dwellers and serious efforts were being made to stabilize the rural population through the improvement of its living standards.

35. Mr. BANTON, drawing attention to Mr. Benhima's reference to the analytical country summary provided by the Anti-Racism Information Service (ARIS) said that the source of the statement to which he had taken exception and which had been identified in that summary, was normally reputable, if sometimes incorrect. It should perhaps be acknowledged that ARIS had in good faith supplied the Committee with information that it had believed might be relevant.

36. Mr. GARVALOV (Country Rapporteur), thanking Mr. Benhima for his exhaustive and informative replies, said that, since he had raised the question of atheism, he wished to explain the circumstances under which article 1 of the Declaration on the Elimination of Intolerance and Discrimination Based on Religion or Belief, to which he had referred in his introductory comments, had been adopted in 1981. Against the background of the political divisions of the time, the Commission on Human Rights had bickered for 20 years about how the different choices inherently available to each individual should be recognized on the basis of the principle of freedom of thought, conscience and religion. At one time, consideration had been given to the possibility of enunciating the right to "monotheistic, theistic, non-theistic and atheistic beliefs", but there had been objections to any mention of atheism. Some delegations had argued for a more comprehensive list of all the beliefs found in world civilization at the time. A deadlock had been reached in the Commission. In 1981, a vote had been taken on a text which had been submitted to the General Assembly for its approval. The importance of having a declaration had been generally recognized, as had the desirability of consensus.

37. At that point, he himself had been requested to mediate a compromise between the different positions. That had been no mean task: it had taken a month to find acceptable wording covering the inherent right of the individual not to opt for a particular religion and leaving the way open for non-theistic, agnostic and atheistic beliefs.

38. Finally, the wording he had proposed had been accepted by all the parties and article 1, paragraph 1, of what had been known at the time as the Declaration on Religious Tolerance, adopted by the General Assembly by consensus on 25 November 1981, stated that: "Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have a religion or whatever belief of his choice ...".

39. Mr. de GOUTTES said that Mr. Benhima's replies to questions had been informative, eloquent and passionate - perhaps a little too passionate as far as Amnesty International and alleged Sahrawi disappearances had been concerned.

40. He believed that the Committee's task had been to draw two especially important matters to the attention of the Moroccan Government. First, article 4 of the Convention was not being implemented in accordance with the Committee's requirements. It was not enough for a State party to incorporate the Convention into domestic law without enacting the legislation required by that article. Secondly, regarding atheism as a threat to the State could not justify its characterization as a crime. Freedom of conscience was indivisible and must be universal. For that reason, the statement in paragraph 70 of the report that freedom of conscience was guaranteed by law "at the very least with regard to Islam, Judaism and Christianity" could not but disturb the Committee, which would no doubt wish to consider the matter further.

41. Mr. SHAHI said that the dialogue with the Moroccan delegation had been both useful and illuminating, focusing as it had on the extent to which a State was entitled to regulate freedom of conscience and belief. The historical background provided by Mr. Garvalov had been most useful. To his own mind, clarification of that matter as far as Morocco was concerned might be sought in the provision of article 18, paragraph 3, of the International Covenant on Civil and Political Rights stating that "Freedom to manifest one's religion or beliefs may be subject ... to such limitations as are ... necessary to protect public ... order ...". The Moroccan authorities based their position on the contention that atheism was a threat to public order. What should be determined was whether that contention was justified and he himself did not believe that it was.

42. Mr. YUTZIS said that the statement by Mr. Benhima had not only shown that, even for experts, there was always room to learn something new, but had also broken new ground in the Committee's procedures. For what he believed to be the first time in the process of dialogue with States parties, information circulated by a non-governmental organization had been referred to directly. In that connection, he fully endorsed Mr. Banton's comment on the generally good faith of non-governmental organizations and said that, in the present case, he would try to have the information in his own possession confirmed.

43. With regard to freedom of conscience and belief, he recalled a not-so-distant time when the members of the Committee had been invited to give their opinion on the claim by atheistic States that, since religion could be a factor for destabilization, the maximum concession was that religion might be practised in private. It seemed in Morocco's case that that proposition had been turned on its head. His own opinion was that, whether a State advocated atheism and at best tolerated religion or did the opposite, the results were equally negative as far as human rights were concerned. Moreover, to act as Morocco had done was to place those who experienced a crisis of faith in a strait-jacket of fear that the open expression or discussion of their doubts with others might be criminalized as propaganda for atheism. Doubt in matters of faith was an especially heavy burden to bear in silence.

44. Referring to the Moroccan statement that Baha'ism was considered to be a heresy, he said that he was by no means competent to enter into detailed debate on the issue, but would merely note that world civilization would be much the poorer if certain "heretics" and "heresies" of the past had been persecuted out of existence. The names of Luther, Calvin and Knox and of the Reformed Church and sects such as the Waldenses were among the examples that came to mind. It was surely healthy for the trunk of a major religion to put forth branches of dissent.

45. The CHAIRMAN said that the Committee had concluded the first part of its consideration of the eleventh periodic report of Morocco.

The meeting rose at 6.10 p.m.